# In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 313

WALTER SELINGER, PETITIONER

*v.*

LESTER BIGLER, SPECIAL AGENT OF THE INTERNAL REVENUE SERVICE, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

**MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION**

This action involves a preindictment motion for the return of property and to suppress evidence (R.I. 1–2).[1] After conflicting testimony was offered at the hearing, the district court made the following findings:

The respondents—Special Agent Bigler and Revenue Agent Landesman—interviewed petitioner at his place of business (R.I. 128). The agents identified themselves and informed him of their official status (R.I. 129). They told petitioner that they wanted to see his business records in furtherance of their investigation of his tax returns. They advised him that he

[1] "R.I." references are to Volume I of the Record in the Court of Appeals, which has been lodged with this Court.

did not have to show them these records or give them any information if he did not wish to (R.I. 129–130). Petitioner, voluntarily and without any threats or promises, agreed to let the agents examine his business records (R.I. 130). Petitioner's accountant thereafter voluntarily turned over other records, which the agents photocopied (R.I. 130). Other records were subsequently voluntarily made available to the agents by petitioner's office manager (R.I. 130–131). From these facts the district court concluded that none of taxpayer's constitutional rights had been violated (R.I. 131), and the Ninth Circuit affirmed this decision *per curiam* (Pet. App. 7–8).

It is uncontested that petitioner was not advised of his right to counsel during the time that the agents interviewed him. There is no merit to taxpayer's contention (Pet. 4–9) that such a warning was required.

All prior appellate decisions are in accord with the decision below. *Kohatsu* v. *United States,* 351 F. 2d 898 (C.A. 9), certiorari denied, 384 U.S. 1011; *Rickey* v. *United States,* 360 F. 2d 32 (C.A. 9), certiorari denied, 385 U.S. 835; *Thomas* v. *United States,* 370 F. 2d 96 (C.A. 5), certiorari denied, 386 U.S. 975;[2] *Morgan* v. *United States* (C.A. 1), decided May 16, 1967 (19 A.F.T.R. 2d [illegible]); *United States* v. *Maius* (C.A. 6), decided June 15, 1967, petition for certiorari

[2] Although this issue is not discussed in the Fifth Circuit's *per curiam* opinion, it is evident from Mr. Justice Douglas' dissent from the denial of certiorari in *Thomas* that the question was raised in the case. Cf. *Evans* v. *United States,* (C.A. 5), decided May 19, 1967.

pending, No. 372, Oct. Term 1967.[3] These decisions are clearly not in conflict with the decision of this Court in *Miranda* v. *Arizona*, 384 U.S. 436, which was directed to "the admissibility of statements obtained from a defendant questioned *while in custody or otherwise deprived of his freedom of action in any significant way.*" *Id.* at 445 (emphasis added). Here, in contrast, the agents questioned taxpayer at his own place of business and in the presence of his wife.[4]

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[3] The case upon which petitioner relies (Pet. 6–8), *United States* v. *Turzynski* (N.D. Ill.), decided June 2, 1967 (20 A.F.T.R. 2d 5004), is an aberrant district court opinion. See *United States* v. *Gleason* (S.D.N.Y.), decided March 14, 1967 (19 A.F.T.R. 2d 1615); *United States* v. *Fiore*, 258 F. Supp. 435, 440 (W.D. Pa.); *United States* v. *Schlinsky*, 261 F. Supp. 265 (Mass.), affirmed, June 6, 1967 (C.A. 1) (19 A.F.T.R. 2d 1597, 1599); *United States* v. *Hill*, 260 F. Supp. 139 (S.D. Calif.); *United States v. Carlson*, 260 F. Supp. 423 (E.D.N.Y.); *Moon* v. *Brennan* (E.D. Wis.), decided November 21, 1966 (19 A.F.T.R. 2d 641); *Stern* v. *Robinson*, 262 F. Supp. 13 (W.D. Tenn.); *United States* v. *Bachman* (W.D. Penn.), decided October 4, 1966 (19 A.F.T.R. 2d 1105); *United States* v. *Neves* (S.D.N.Y.), decided April 28, 1967 (67–1 U.S.T.C. par. 9412).

[4] For similar reasons there is not, as petitioner contends, a conflict with *Escobedo* v. *Illinois*, 378 U.S. 478. As this Court noted in *Miranda*, *Escobedo* referred to "an investigation which had focused on an accused" in the sense of "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 U.S. at 444 & n. 4.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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